

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: EPHEDRA PRODUCTS LIABILITY
LITIGATION
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04 M.D. 1598(JSR)

PERTAINS TO ALL CASES
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**AFFIDAVIT OF JOHN C. THORNTON, ESQ. IN SUPPORT OF MOTION FOR
REIMBURSEMENT OF EXPENSES INCURRED BY ANDREWS & THORNTON
PRIOR TO THE ASSIGNMENT OF MDL 1598**

I, John C. Thornton, Esq., hereby declare:

1. I am an Attorney duly licensed to practice law in the State of California and admitted to practice *pro hac vice* before this Court.

2. I have personal knowledge of the following facts and, if called as a witness, I could competently testify thereto.

3. This Affidavit is an explanation of expenses incurred by Andrews & Thornton in connection with the Twinlab Chapter 11 case, *In Re: TL Administration Corporation, et al. (Twinlab)*. These expenses were incurred after the filing of Bankruptcy by Twinlab and prior to the formation of MDL-1598.

4. On September 4, 2003, TL Administration Corp. (f/k/a Twinlab Corporation), TL Administration Inc. (f/k/a Twin Laboratories Inc.) and TL Administration (UK) Ltd. (f/k/a Twin Laboratories (UK) Ltd.) (hereinafter collectively "Debtors") filed a petition for reorganization under Chapter 11 of Title 11 of the United States Code.

5. Twinlab involved a company with a significant portion of its corporate debt in bonds and with an organized bond creditor group. The bond creditor group in effect controlled the official committee of unsecured creditors and had interests significantly adverse to tort claimants, who were also unsecured creditors of Twinlab. The non-tort claim creditors accounted for \$70 million in claims and would compete directly with the tort creditors for the limited sums that would be available for Twinlab's general creditors. Simply put, it was in the interest of the bond creditor group to challenge and seek to disallow or materially reduce the claimed value of the tort creditors claims, which were unliquidated and subject to the uncertainties of litigation.

6. Anne Andrews, Esq., an officer of Andrews & Thornton, contacted a number of attorneys for advice about how to establish a position for the tort claimants within the bankruptcy. She consulted with a prominent New York attorney who worked with Andrews & Thornton as co-counsel on a previous Twinlab case, *McDonald v. Twinlab, et al.* Ms. Andrews was advised to contact and retain Fred Brooks, a Financial Consultant with extensive experience in bankruptcy.

7. Andrews & Thornton retained Fred Brooks of Connecticut Economics as a Financial Consultant to help with the daunting problem of establishing an effective position for the tort claimants.

8. Mr. Brooks analyzed the Twinlab Bankruptcy and provided the benefit of his experience in complex bankruptcy and with bond creditors. He provided assistance and direction in connection with addressing the challenges presented at the onset of the case for all tort claimants, including the problems of dealing with the unofficial Creditor Committee which was, as discussed above, hostile to the claims of the tort claimants.

Mr. Brooks provided expert analysis of the situation and proposed the first steps of a plan of action. He explained that the tort claimants constituted a significant general unsecured creditor constituency to which the creditors owed fiduciary obligations. Mr. Brooks emphasized the importance of retaining dynamic creative counsel to represent the tort claimants. He assisted in locating various professionals, most importantly David Molton, Esq., then of Buchanan Ingersoll, P.C.

9. Mr. Brooks' services were rendered in September and October of 2003, however payments for his services were made in six payments of \$6,800.00: three in December 2003; one in February, 2004; one in March 2004 and a final payment in April 2004. A copy of Mr. Brooks's bill from Connecticut Economics dated November 7, 2003 along with the front and back of checks: No. 1015, dated December 1, 2003; No. 1017 dated December 10, 2003; No. 1022 dated December 10, 2003; No 1028 dated February 9, 2004; No. 1035 dated March 11, 2004; No. 1038 dated April 21, 2004 are attached collectively as Exhibit 1.

10. David Molton was retained in October of 2003. The initial payment for the professional services of Mr. Molton and his firm, Buchanan Ingersoll, P.C., were made by Andrews & Thornton. A \$10,000 retainer was paid on November 7, 2003. A copy of the front and back of check number 1008 dated November, 7, 2003 is attached as Exhibit 2.

11. The foundation for the consensual non-litigated resolution to all underinsured claims and related indemnity claims within a plan of liquidation was devised during those formative days. The work performed by Anne Andrews, Fred Brooks and David Molton and others during the pre MDL period was integral to the

resolution of the Twinlab underinsured cases. This pre MDL work, and the associated costs, also served as a template for the subsequent resolution of the Muscletech, NVE and Metabolife bankruptcies.

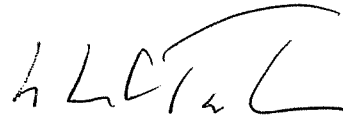
12. An Official Tort Claimants Committee was appointed by Judge Blackshear, over objections from trade creditors, and a valuation was made of the tort claims by an expert retained by the Official Tort Claimants Committee. Thereafter, the interested parties, working together on the then Twinlab global settlement template, obtained from this Court a temporary stay against non-debtor defendants to prevent indemnification claims from being liquidated to the estate's detriment and to permit global negotiations with Twinlab, its insurer, retailers and other co-defendants. The global settlement of underinsured tort claims required cash contributions from Twinlab, its retailers and other co-defendants, in exchange for releases and channeling injunctions to achieve finality for all participating parties. The final step was the consensual allocation of the global settlement by a referee, Retired Justice John Trotter. Ms. Andrews and Mr. Molton believed and proclaimed that such a resolution could be accomplished even before the determination by the Court of the science/*Daubert* trial which was held by the Court in early 2005. Their belief was greeted by almost universal skepticism at the time.

13. Anne Andrews, Esq. served on the Creditor Committee for all four (4) bankruptcies and David Molton served as Committee Counsel for Official Committees in the Twinlab, Muscletech, NVE and Metabolife bankruptcies. Although Muscletech as a Chapter 15 Bankruptcy posed some unique and challenging problems, the Twinlab template prevailed in Muscletech, NVE, and Metabolife.

14. This Affirmant respectfully requests that this Court recognize that the work and expenses incurred by Andrews & Thornton prior to the formation of the MDL was integral to the resolution achieved in the Twinlab bankruptcy and directly benefited future MDL cases including those cases in the Muscletech, NVE and Metabolife bankruptcies. These costs have not been previously reimbursed from any other source.

15. This Affirmant respectfully requests that this Court find good cause exists to reimburse Andrews & Thornton in the amount of \$50,800.00. This amount reflects the costs paid to Fred Brooks of \$40,800.00 for his professional services and to Buchanan Ingersoll, P.C. for \$10,000.00

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct and that this Affidavit was executed this 30th day of April 2008 at Santa Ana, California.

A handwritten signature in black ink, appearing to read 'J. C. Thornton', is written above a horizontal line.

John C. Thornton, Esq.

EXHIBIT

1

CONNECTICUT ECONOMICS CORPORATION
189 Shore Road
Old Greenwich, CT 06870
203 637 0069

November 7, 2003

Ann Andrews, Esq.
Andrews & Thornton
820 N. Parton, 2nd Floor
Santa Ana, California

In re Twinlab Corporation, et al
Chapter 11 Case No. 03-15564

For consulting and advisory services of Frederic H. Brooks for the period from September 26, 2003 to October 29, 2003.

102 hours

\$40,800 including disbursements

6 payments

<u>Date</u>	<u>Ch#</u>	<u>Amount</u>	<u>L</u>
* 12/1/03	1015	6,800	
12/10/03	1017	6,800	
12/16/03	1022	6,800	
2/9/04	1028	6,800	
3/11/04	1035	6,800	
4/21/04	1038	6,800	
		<hr/> 40,800	

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



PACIFIC
MERCANTILE
BANK

450 Newport Center Drive, Ste 100
Newport Beach, CA 92660

90-4286/1222

Exhibit D
12/1/2003

1015

PAY TO THE ORDER OF Fredric H Brooks

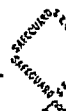
\$ **6,800 00

Six Thousand Eight Hundred and 00/100*****

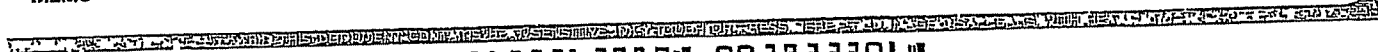
DOLLARS

Fredric H Brooks
189 Shore Rd
Old Greenwich, CT 06870

[Handwritten Signature]



MEMO



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ANDREWS & THORNTON LAW OFFICES Cost Account
Fredric H Brooks

12/1/2003

1015

6,800 00

LH-AT Joint Cost - 27223

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
Fredric H Brooks

12/1/2003

1015

6,800 00

LH-AT Joint Cost - 27223

6,800 00

SF5001NL 1

TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 714-658-9399

M035P027735

SAFEGUARD LITHO USA STBL CT 5001NL (201)

<p>ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 800 N. FAYEN, 2ND FLOOR SANTA ANA, CA 92701</p>	<p><small>PAY TO THE ORDER OF</small> 450 Newport Center Drive, Ste. 100 Newport Beach, CA 92660 949.426.7222</p>	<p>1015</p> <p>12/12/03</p> <p>\$ **6,800.00</p>
<p>PAY TO THE ORDER OF Freddie H. Brooks</p> <p>\$ 6,800.00</p> <p>DOLLARS</p>		
<p>MEMO</p> <p>Freddie H. Brooks 180 Shore Rd Old Greenwich, CT 06870</p>		
<p><i>[Signature]</i></p>		
<p>⑈001015⑈ ⑈122242869⑈ ⑈002722304⑈ ⑈0000680000⑈</p>		

1015 Front 12/08/03 \$6800.00

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1015 Back 12/08/03 \$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



450 Newport Center Drive, Ste 100
Newport Beach, CA 92660
90-4286/1222

1017

Exhibit D
12/10/2003

PAY TO THE ORDER OF Connecticut Economics Corporation

\$ **6,800 00

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Connecticut Economics Corporation
Attn Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870

[Signature]
MP
SACRAMENTO, CA

MEMO

Second Payment

⑈001017⑈ ⑆122242869⑆ 002722304⑈

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

12/10/2003

1017

6,800 00

LH-AT Joint Cost - 27223 Second Payment

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ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

12/10/2003

1017

6,800 00

LH-AT Joint Cost - 27223 Second Payment

6,800 00

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TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 714-555-0259

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PAGE 3

Period: 11/2

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PAY TO THE ORDER OF Connecticut Economics Corporation \$ 6,800.00 Six Thousand Eight Hundred and 00/100		DOLLARS	
MEMO Second Payment			
Connecticut Economics Corporation Attn: Fred Brooks 37 MacArthur Dr Old Greenwich, CT 06870			
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1017

Front 12/26/03

\$6800.00

The security features listed below are visible on the front of the check. • Watermark: A large, faint watermark of the number "1017" is visible on the front of the check. • Microprint: The words "MERRILL LYNCH" are printed in a very small font along the top edge of the check. • Security Thread: A security thread is embedded in the paper of the check. • Hologram: A small, circular hologram is located on the front of the check. • Color Shift: The color of the ink on the front of the check changes when viewed from different angles. • UV Fluorescence: The ink on the front of the check glows under ultraviolet light. • Security Features: The security features listed below are visible on the front of the check.	0048 12671 12/26/2003	PAY TO THE ORDER OF Fred Brooks 37 MacArthur Dr Old Greenwich, CT 06870
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Back 12/26/03

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Actual Payment
 Connecticut Economics Corporation
 37 MacArthur Dr
 Old Greenwich, CT 06870
 ⑈001017⑈ ⑈122242669⑈ ⑈002722304⑈ ⑈0000680000⑈

PAY TO THE ORDER OF
 Fred Brooks
 37 MacArthur Dr
 Old Greenwich, CT 06870
 MEMO

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



450 Newport Center Drive, Ste 100
Newport Beach, CA 92660

90-4286/1222

1022

Exhibit D
12/10/2003

PAY TO THE ORDER OF Connecticut Economics Corporation

\$ **6,800 00

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Connecticut Economics Corporation
Attn Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870

LLC

MEMO

Thrd Payment

⑈001022⑈ ⑆122242869⑆ 002722304⑈

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

12/10/2003

1022

6,800 00

LH-AT Joint Cost - 27223 Thrd Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

12/10/2003

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LH-AT Joint Cost - 27223 Thrd Payment

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TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 714 600-9399

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Account: 2722304

Period: 1/1/2004 To

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
253 N. PALMCA 2nd FLOOR
SANTA ANA, CA 92701

1022

12-10-2003

\$ 6,800.00

PAY TO THE ORDER OF **Cost Account Economics Corporation**

Six Thousand Eight Hundred and 00/100

Cost Account Economics Corporation
Attn: Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870

MEMO
Title Payment

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RECEIVED
COST ACCOUNT
12-10-2003

1022

Front 01/14/04

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10

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Back 01/14/04

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**PACIFIC
MERCANTILE
BANK**

450 Newport Center Drive, Ste 100
Newport Beach, CA 92660

90-4286/1222

Exhibit D
9/20/74

\$ 6,800.00

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Connecticut Economics Corporation
Attn: Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870

MEMO

Fourth Payment

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ANDREWS & THORNTON LAW OFFICES Cost Account

Connecticut Economics Corporation

2/9/2004

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LH-AT Joint Cost - 27223 Fourth Payment

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ANDREWS & THORNTON LAW OFFICES Cost Account

Connecticut Economics Corporation

2/9/2004

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LH-AT Joint Cost - 27223 Fourth Payment

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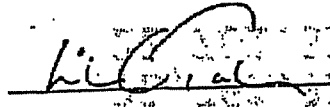
TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 714-668-9399

MICSR2735

THE UNIVERSITY MICROFILMS INTL. SER. 87531 IL 1701

Account: 2722304

Period: 2/28/2004

ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 820 N. PARTON, 2nd FLOOR SANTA ANA, CA 92701		PACIFIC MERCHANTILE BANK 480 Newport Center Drive, Ste. 100 Newport Beach, CA 92660 80-4280/1222	1028 2/28/2004
PAY TO THE ORDER OF Connecticut Economics Corporation \$ 6,800.00 Six Thousand Eight Hundred and 00/100		DOLLARS	
Connecticut Economics Corporation Anne Fred Brooks 37 MacArthur Dr Old Greenwich, CT 06870			
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Back 03/04/04

\$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



450 Newport Center Drive, Ste 100
Newport Beach, CA 92660

90-4285/1222

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Exhibit D
3/11/2004

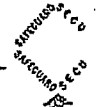
PAY TO THE ORDER OF Connecticut Economics Corporation

\$ **6,800 00

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Connecticut Economics Corporation
Attn Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870



MEMO

Fifth Payment

⑈001035⑈ ⑆122242869⑆ 002722304⑈

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

3/11/2004

1035

6,800 00

LH-AT Joint Cost - 27223 Fifth Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

3/11/2004

1035

6,800 00

LH-AT Joint Cost - 27223 Fifth Payment

6,800 00

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TO REORDER CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 714-659-8339

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ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
 820 N. PARTON, 2nd FLOOR
 SANTA ANA, CA 92701

PAY TO THE ORDER OF
 Connecticut Economics Corporation

Six Thousand Eight Hundred and 00/100

Connecticut Economics Corporation
 Attn: Fred Brooks
 37 MacArthur Dr
 Old Greenwich, CT 06870

MEMO
 Fifth Payment

1035

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03/18/04

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\$6800.00

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03/18/04

\$6800.00

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Back 03/18/04

\$6800.00

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N PARTON, 2nd FLOOR
SANTA ANA, CA 92701



PACIFIC
MERCANTILE
BANK
450 Newport Center Drive, Ste 100
Newport Beach, CA 92660
9D-4286/1222

1038

Exhibit D
4/21/2004

PAY TO THE ORDER OF Connecticut Economics Corporation

\$ **6,800 00

Six Thousand Eight Hundred and 00/100*****

DOLLARS

Connecticut Economics Corporation
Attn Fred Brooks
37 MacArthur Dr
Old Greenwich, CT 06870

[Handwritten signature]

MEMO

Sixth (Final) Payment

⑈001038⑈ ⑆122242869⑆ 002722304⑈

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

4/21/2004

1038

6,800 00

LH-AT Joint Cost - 27223 Sixth (Final) Payment

6,800 00

ANDREWS & THORNTON LAW OFFICES Cost Account
Connecticut Economics Corporation

4/21/2004

1038

6,800 00

LH-AT Joint Cost - 27223 Sixth (Final) Payment

6,800 00

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SAFEGUARD
UNIVERSAL SAFETY FILM

EXHIBIT

2

ANDREWS & THORNTON LAW OFFICES
COST ACCOUNT
820 N. PARTON, 2nd FLOOR
SANTA ANA, CA 92701



450 Newport Center Drive, Ste 100
Newport Beach, CA 92650

90-4286/1222

1008

Exhibit D
11/7/2003

PAY TO THE ORDER OF Buchanan Ingersoll PC

\$ **10,000 00

Ten Thousand and 00/100

DOLLARS

Buchanan Ingersoll PC
140 Broadway, 35th Floor
New York, NY 10005-1101

Handwritten signature: HLCIT

MEMO

Twin Lab BK Representation

⑈001008⑈ ⑆122242869⑆ 002722304⑈

ANDREWS & THORNTON LAW OFFICES Cost Account
Buchanan Ingersoll PC

11/7/2003

1008

10,000 00

LH-AT Joint Cost - 27223 Twin Lab BK Representation

10,000 00

ANDREWS & THORNTON LAW OFFICES Cost Account
Buchanan Ingersoll PC

11/7/2003

1008

10,000 00

LH-AT Joint Cost - 27223 Twin Lab BK Representation

10,000 00

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TO REORDER, CALL YOUR LOCAL SAFEGUARD DISTRIBUTOR AT 714-945-9399

SAFEGUARD UNITED STATES OF AMERICA

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PAGE 3

Period: 11

ANDREWS & THORNTON LAW OFFICES COST ACCOUNT 230N PARKER STREET SANTA ANA, CA 92701		1008 11/7/03
PAY TO THE ORDER OF Bedman Impecc PC Ten Thousand and 00/100		\$ **10000.00
Bedman Impecc PC 140 Broadway, 35th Floor New York, NY 10005-1101		DOLLARS
MICR: ⑈001008⑈ ⑈1122242859⑈ ⑈002722304⑈ ⑈0001000000⑈		

1008

Front 11/18/03

\$10000.00

041000124 NATIONAL CITY, OH 11/17/03	0101 37317 11/18/2003	PAY TO THE ORDER OF BY FOR DEPOSIT ONLY
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1008

Back 11/18/03

\$10000.00